

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 943 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PURSHOTTAM TAPUBHAI HARIJAN

Versus

CIRCLE POLICE INSPECTOR

Appearance:

MR PRAVIN GONDALIYA for Petitioner

MR HH PATEL, AGP, for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/12/1999

ORAL JUDGEMENT

1. The petitioner challenges the order of externment passed by Sub Divisional Magistrate, Gondal on July 8, 1999 in exercise of powers u/s 5[a] of the Bombay Police Act externing the petitioner from Rajkot city, and districts Rajkot Rural, Amreli, Junagadh and Jamnagar for a period of one year.

2. Prior to passing of the order, the Sub Divisional

Magistrate, Gondal issued a notice on November 11, 1998 to the petitioner as required u/s 59 of the Bombay Police Act to show cause as to why orders u/s 56[a] of the Bombay Police Act may not be passed. In the notice, it was alleged that two offences punishable u/s 506[2] and 114 & 504 and 506[2] of IPC are registered against the petitioner and are pending trial. It is also contended in the notice that many cases under the Bombay Prohibition Act are registered against the petitioner. The authority took into consideration the statements of six witnesses whose identity has not been disclosed to come to a conclusion that the petitioner is involved in the activities which are detrimental to the public interest and therefore, the petitioner was called upon to show cause why externment orders should not be passed against him. The petitioner replied to the notice and after conducting the proceedings for externment, the Sub Divisional Magistrate, Gondal passed an order externing the petitioner for one year.

3. In the externment order, the externing authority observes in para 2, which can be translated into English, as under :-

"Thus, although offences punishable under Chapter XII, XVI and XVII are registered against the opponent, the opponent is harassing innocent citizens by administering threats."

The authority thereafter went on to consider the various aspects in the nature of statements of unidentified witnesses, the witnesses produced by the petitioner and ultimately, came to a conclusion that the order of externment is required to be passed, externing the petitioner.

4. The petitioner in this petition under Article 226 of the Constitution of India challenges the order of externment on various grounds. The main grounds are that the externing authority has observed that offences punishable under Chapter XII, XVI and XVII of IPC are registered against the petitioner, but in fact, if the notice and the order are seen, the offences which are registered against the petitioner and which are considered by the authority while passing the order, are not punishable under Chapter XII, XVI and XVII of IPC. This indicates that there is non-application of mind by the externing authority.

4.1 It is further contended that although it is clear from the order of externment that the sponsoring officer

had furnished the details of the prohibition cases alleged to have been registered against the petitioner, the externing authority while issuing notice has referred to the prohibition cases, as "many prohibition cases registered against the petitioner", the authority has not given any details in respect of these alleged cases. The allegation is therefore, vague and the petitioner could not effectively meet with the allegations of his involvement in the prohibition cases, in absence of any such details. The petitioner is, therefore, deprived of his right of audience as contemplated u/s 59 of the Bombay Police Act.

5. Mr. Gondalia, learned advocate appearing for the petitioner has restricted his argument to the above point only. His thrust was that the order clearly indicates a case of non-application of mind and passing of a mechanical order. There is a denial to the right of making an effective representation and an appropriate audience and therefore, order of externment may be quashed. Mr. Gondalia placed reliance on the decision in the case of Rajput Karansinh G. v/s Sub Divisional Magistrate, Bhavnagar as reported in 1998 [2] GLR 1402 and urged that the petition may be allowed and the impugned order may be set aside.

6. Mr.H.H.Patel, learned AGP submitted that the order is passed u/s 56[c], as can be seen from the contents of the notice and the order. The authority has taken into consideration the past antecedents and behaviour of the proposed externnee while passing the order and therefore, the order cannot be assailed on the ground of non-application of mind. He submitted further that the requirement of section 56[c] though not met with, order can be passed by the authority as the petitioner was involved in nefarious activities detrimental to the well-being of the society. He has pressed into service the decision of this Court in the case of Abedin Rasul Bombaywala v/s Commissioner of Police, Surat as reported in 1986 GLR 986 and has placed reliance on para 8, in particular. He therefore urged that the petition may be dismissed.

7. At the outset, it may be noted that the order is passed u/s 56[a] and not u/s 56[c], as contended by learned APP. If the order is passed u/s 56[c] of the Bombay Police Act as contended by the learned APP, exfacie the order would be bad, because, it is no where the case, neither in the notice nor in the externment order, of the externing authority that there is a likelihood of outbreak of epidemic decease from the

continued residence of immigrant as contemplated u/s 56[c] of the Bombay Police Act. It is no where the case that the petitioner is an immigrant and it is no where the case that there is any chance of outbreak of epidemic and therefore, if the order is passed u/s 56[c] as contended by the learned APP, the order itself would be a glaring example of non-application of mind and would be an order bad in law. However, it is not contended by the petitioner, nor it is so found by the Court that the order is passed u/s 56[c], but it is passed u/s 56[a].

8. Now, considering the notice as well as the order in question passed by the externing authority, it is clear that two offences are registered against the petitioner which are taken into consideration by the externing authority while issuing notice, as well as, while passing the order. They can be stated in tabular form as under :-

S.N.	Cr.R.No. &	Section	Place and	Result
	Name of the		Date of the	
	Police Station		Offence	

1.	II - 3101/97	IPC Sec.	Rupavati	Pending in
	Gondal	506[2],	Village	Court
Taluka	114	5/12/97		
2.	II - 3099/97	IPC Sec.	Rupavati	
	Gondal	504,	Village	"
	Taluka	506[2]	1/12/97	

9. The externing authority has stated in the order of externment in para 2 that, although offence punishable under Chapter XII, XVI and XVII of IPC, are registered against the petitioner, the petitioner is harassing the innocent citizens by administering threats.

10. Now, in the opinion of this Court, this is a clear case of non-application of mind. The offences that are registered against the petitioner, are punishable u/s 504, 506[2] and 114 IPC. These offences are not covered under Chapter XII, XVI and XVII of IPC. The externing authority has therefore not considered this aspect and therefore, there is non-application of mind by the externing authority while passing the order of externment.

11. In this regard, the decision in the case of Rajput Karansinh [Supra], relied upon by Mr. Gondalia, may also be referred to. In that case, the allegations spelled out place and time of occurrence and were related to offence coming under Chapter XVI and XVII of IPC. But the show cause notice referred to the offences committed by the petitioner as coming under Chapter XII and XVII of IPC and the Division Bench came to the conclusion that this was a case of non-application of mind. In the facts and circumstances of the case before this Court, the two offences which are broadly said to have been covered under Chapter XII, XVI and XVII of IPC, are not covered under any of the three chapters of the IPC and therefore, it can safely be presumed that either the externing authority did not apply mind to the facts of the case or it did not apply mind to the provisions of law. In either case, the externment order gets vitiated.

12. As regards the contention that the notice is vague, it appears that there was an allegation to the fact that, apart from the two registered offences stated in the notice in a tabular form under IPC, many cases under the Bombay Prohibition Act are registered against the proposed externee in Gondal Taluka. Prohibition cases are considered by the Externing Authority while considering the need for externing the petitioner, as can be seen from the order of externment. Prohibition cases therefore, formed part of basis/considerations for the passing of order of externment. Now, if the externment order is seen, in the later portion, in para 5 of the order, the externing authority has narrated the deposition of complainant Mr.C.N.Mehta , Circle Police Inspector, who was the sponsoring officer. If the deposition is seen, he states that while sending the proposal, he had sent the details of prohibition cases registered against the proposed externee. No explanation is coming forward from the externing authority as to why the details regarding prohibition cases were not furnished to the proposed externee while issuing notice u/s 59 of the Bombay Police Act. Non-mentioning of the details and making a vague allegation about many prohibition cases at Gondal Taluka has deprived the petitioner from meeting with these allegations while replying to the notice. It therefore can not be said that the requirement of section 59 is met with. Requirement of section 59 are not to be met with an empty formality, in a mechanical manner. The law-makers have incorporated this provision in the Act with purpose and it has to be scrupulously followed.

13. At this stage, reference may be made to the

affidavit in reply. The externment authority in para 11 has stated as under :-

"11. I say and submit that so far as para 4[E] of the petition is concerned, I deny the averment that the order of externment relying upon the criminal offences not falling under Chapter 12, 16 and 17 of the Indian Penal Code, is result of non-application of mind. I do hereby state in light of the provisions of section 56 of the B. P. Act, that any person preparing to engage or involve him/her self in such criminal offence [s] punishable under chapter 12, 16 and 17 of the IPC is deemed liable to take action of externment."

A plain reading of the above contention makes it clear that an attempt is made to sidetrack the main contention raised by the petitioner. Para 11 states that it is in relation to para 4[E] of the petition. If para 4[E] of the petition is seen, it deals with the contentions regarding the allegations as to the prohibition cases and non-supply of the details and therefore, para 11 of the affidavit in reply, cannot be said to meet with the contentions of para 4[E] of the petition. However, it appears that the contention that is made in para 11 is relating to para 4[F] of the petition. But there also, it does not squarely and satisfactorily meet with the contention raised in the petition. The contention is regarding the registered offences [FIRs] being not falling under Chapter XII, XVI and XVII of IPC as contended in the order of externment reflecting non-application of mind, whereas in the affidavit in reply, in para 11, that aspect is not dealt with at all and an attempt is made to explain that, in light of provisions of section 56 of the Bombay Police Act, any person preparing to engage or involve himself or herself in such criminal offences punishable under Chapter XII, XVI and XVII of IPC is deemed liable to action of externment. The affidavit in reply therefore does not properly meet with the contentions raised by the petitioner.

14. In view of the above, the petition deserves to be allowed. The impugned order of externment is found to be vitiated on ground of non-application of mind and improper compliance of section 59 of the Bombay Police Act.

15. The petition is therefore allowed. The impugned order of externment and the order of the appellate authority are quashed and set aside. Rule is made

absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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